

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

JAMES ATTERBERRY,

Plaintiff,

v.

AMY WALLEN, et al.,

Defendants.

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No. 4:17-cv-884-NCC

MEMORANDUM AND ORDER

This matter is before the Court upon review of the file. On March 13, 2017, plaintiff filed a civil complaint in this Court pursuant to 42 U.S.C. § 1983, and filed a motion for leave to proceed *in forma pauperis*. However, he failed to submit a certified inmate account statement, and on March 27, 2017 the Court ordered him to do so. When plaintiff did not timely comply with that order, the Court *sua sponte* gave him a fourteen-day extension of time. Plaintiff submitted the required information, and this Court granted his motion for leave to proceed *in forma pauperis* and conducted initial review of his complaint pursuant to 28 U.S.C. § 1915(e). Upon such review, the Court determined that the complaint failed to state a claim upon which relief could be granted. In an order dated June 13, 2017, the Court gave plaintiff an opportunity to submit an amended complaint, and also directed him to submit an initial partial filing fee of \$13.20. The Court cautioned plaintiff that his failure to timely comply would result in the dismissal of his case without further notice. His response to the Court was due on July 5, 2017.

To date, plaintiff has neither complied with the Court's order nor sought additional time to do so. Plaintiff was given meaningful notice of what was expected, and cautioned that his case would be dismissed if he failed to timely comply with the Court's order. Therefore, this

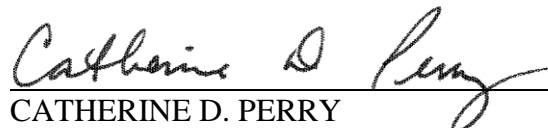
action will be dismissed without prejudice due to plaintiff's failure to prosecute his case and his failure to comply with this Court's June 13, 2017 order. Fed. R. Civ. P. 41(b); *see also Dudley v. Miles*, 597 F. App'x 392 (8th Cir. 2015) (*per curiam*) (affirming dismissal without prejudice where *pro se* plaintiff failed to file an amended complaint despite being cautioned that dismissal could result from failure to do so); *Fitzwater v. Ray*, 352 F. App'x 125, 126 (8th Cir. 2009) (*per curiam*) (district court did not abuse its discretion in dismissing action without prejudice when the *pro se* plaintiffs failed to comply with an order "directing them to file within fourteen days an amended complaint in conformity with Rule 8"); *Brown v. Frey*, 806 F.2d 801, 803-04 (8th Cir. 1986) (a district court has the power to dismiss an action for the plaintiff's failure to comply with any court order).

Accordingly,

IT IS HEREBY ORDERED that this case is **DISMISSED** without prejudice. A separate order of dismissal will be entered herewith.

IT IS HEREBY CERTIFIED that an appeal from this dismissal would not be taken in good faith.

Dated this 3rd day of August, 2017.


CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE